

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

PERMIT 21095

Application 30561 of      Anthony M. and Jo Ann M. Truchard  
   3234 Old Sonoma Road  
   Napa, CA 94559

filed on **August 23, 1996**, has been approved by the State Water Resources Control Board (SWRCB) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1.    Source of water

Source Unnamed Stream (2)	Tributary to Unnamed Stream (aka Stanley Creek) thence Horseshoe Bend thence Napa River thence San Pablo Bay
------------------------------	--

within the County of Napa

2.    Location of point of diversion

By California Coordinate System in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
Point of Diversion by Collection to Storage (Reservoir #3); North 223,700 feet and East 1,910,100 feet	SW¼ of NW¼	16	5N	4W	MD
Point of Diversion to Offstream Storage in Reservoir #3; North 223,425 feet and East 1,908,850 feet	SE¼ of NE¼	17	5N	4W	MD

<b>Point of Rediversion (Reservoir #1) North 223,100 feet and East 1,908,250 feet</b>	<b>NE¼ of SW¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>
<b>Point of Rediversion (Reservoir #2) North 223,050 feet and East 1,908,450 feet</b>	<b>NE of SE¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section (Projected)	Township	Range	Base and Meridian	Acres
<b>Irrigation</b>	<b>SW¼ of NW¼</b>	<b>16</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>14</b>
	<b>SE¼ of NW¼</b>	<b>16</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>5</b>
	<b>NW¼ of SW¼</b>	<b>16</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>20</b>
	<b>NE¼ of SW¼</b>	<b>16</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>10</b>
	<b>SE¼ of SW¼</b>	<b>16</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>5</b>
	<b>SW¼ of SW¼</b>	<b>16</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>10</b>
	<b>SW¼ of NE¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>1</b>
	<b>SE¼ of NE¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>14</b>
	<b>NE¼ of SE¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>25</b>
	<b>SE¼ of SE¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>6</b>
	<b>SW¼ of NE¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>1</b>
	<b>NW¼ of SE¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>11.5</b>
	<b>SE¼ of NW¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>4</b>
	<b>NE¼ of SW¼</b>	<b>17</b>	<b>5N</b>	<b>4W</b>	<b>MD</b>	<b>7</b>
					<b>TOTAL</b>	<b>134.5</b>

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 40 acre-feet per annum to be collected from November 1 of each year to April 1 of the succeeding year.

(0000005C)

**Application 30561**

**Permit**

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0000005I)

The maximum rate of diversion to offstream storage shall not exceed 3 cubic feet per second.

(0000005J)

The total quantity of water collected to storage under this permit, Permit 21094 (Application 30504) and Permit 21096 (Application 30505) shall not exceed 80 acre-feet per annum.

(0000005L)

The total quantity of water collected to storage under this permit and License 6203 issued pursuant to Application 17064 shall not exceed 40 acre-feet per annum.

(0000005M)

In recognition of the water rights held under Applications 30504, 30505 and 30561, the capacity of Reservoir #1 shall not exceed 15 acre-feet, the capacity of Reservoir #2 shall not exceed 25 acre-feet, and the capacity of Reservoir #3 shall not exceed 40 acre-feet, which are the stated capacities in the application.

(0000005P)

6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2011.

(0000009)

7. During the period between March 15 and April 1 water may be collected to storage under this permit only when there are no restrictions imposed by the watermaster on diversions from the Napa River.

(0000085b)

8. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only

after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.

(0000215)

9. This permit is specifically subject to the prior rights of Joseph Ghisletta, Jr. et al under appropriation issued pursuant to Application 25580A-1; Richard E. Hyde et al under appropriation issued pursuant to Application 25580A-2; Edward and Camille Penhoet under appropriation issued pursuant to Applications 25580B, 25580C-2 and 29262; and Beringer Wine Estate Company under appropriation issued pursuant to Application 30236; and all successors in interest.

(000000Tmod)

10. Upon agreement between Permittee and Protestors, Permittee and Protestants shall install and properly maintain a staff gage at a mutually agreed upon location downstream of the confluence of the Unnamed Stream (aka Stanley Creek) and the tributary on which Reservoir #2 is located. Joseph Ghisletta, Jr. et al shall allow Anthony M. Truchard and all successors in interest, or a designated representative, reasonable access to the gage for the purpose of verifying staff gage readings and determining the flow in the Unnamed Stream. Before installing the proposed staff gages, the Permittee and Protestants shall submit to the State Water Resources Control Board a written agreement regarding the cost of installing and proper maintenance of the proposed staff gages. Permittee and/or Protestants shall supply a staff gage rating curve for each gage to the Chief of the Division of Water Rights and to Joseph Ghisletta, Jr. et al, Richard E. Hyde et al, Edward and Camille Penhoet, and Anthony and JoAnn Truchard or successors, prior to diverting any water from said point of diversion.

(0060800)

11. Permittee shall install and properly maintain in the reservoirs a staff gage, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoirs.

Permittee shall record the staff gage readings on or about November 1 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee.

The State Water Resources Control Board may require the release of water that can not be verified as having been collected to storage prior to November 1 of each year.

After prior notification from protestants, permittee shall allow Joseph Ghisletta, Jr. et al, Richard E. Hyde et al, Edward and Camille Penhoet, and Beringer Wine Estates Company, and all successors in interest, or a designated representative, reasonable access to the reservoirs for the purpose of verifying staff gage readings and determining water levels in the reservoirs

(0100047mod)

12. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam for Reservoir No.1 as near as practicable to the bottom of the natural stream channel that water entering the reservoir that is not authorized for appropriation under this permit can be released. Before starting construction of Reservoir No.1, permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Permittee shall provide other means satisfactory to the State Water Resources Control Board at Reservoir Nos. 2 and 3, so that water entering the reservoirs can be released. Before storing water in the reservoirs, permittee shall furnish evidence showing that the outlet pipe has been installed in the dam for Reservoir No. 1, and other means have been provided for bypassing water at Reservoir Nos. 2 and 3. Evidence shall include photographs showing completed works and/or certification by a registered Civil or Agricultural Engineer.
- (0050043bp-mod)
13. Permittee shall bypass 3 cubic feet per second or the natural flow, whichever is less, as measured at the staff gage on the Unnamed Stream provided for herein, until the prior rights of Joseph Ghisletta, Jr. et al, Richard E. Hyde et al and Edward and Camille Penhoet (collectively "Protestors") and all successors in interest, are satisfied during the current collection season. Whenever the measured flows are less than 3 cubic feet per second, and upon notification from Protestors, or all successors in interest, Permittee shall cease the diversion of water under this permit until flows are sufficient for all diverters or until the prior rights of Protestors, or successors in interest, are satisfied.
- (0160400)
14. Whenever the flows of the unnamed stream is insufficient to satisfy the prior storage right of Beringer Wine Estates Company and upon notification from Beringer Wine Estates Company, Permittee shall cease the diversion of water under this permit until flows are sufficient to fulfill the storage right of Beringer Wine Estates Company or for both diverters.
- (0160400)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- (A) Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- (B) The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (C) Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.

- (D) Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- (E) Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

- (F) The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

- (G) This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.
- (H). No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

*Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.*

*Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.*

*Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).*

**Dated: April 5, 2001**

STATE WATER RESOURCES CONTROL BOARD

*Naivell R. Bunting*  
for Chief, Division of Water Rights